

#8/Appeal Brief

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

March 21, 2003

Louis B. Paludi

Docket No.: 1095\_001CON

Ser. No.: 09/976,431

Art Unit: 3713

Filed: October 12, 2001

Examiner: Enatsky, Aaron L.

For: GAME UTILIZING NON-IDENTICAL SEQUENTIAL IMAGES  
AS A WINNING CONDITION

Box AF

Assistant Commissioner for Patents  
Washington, DC 20231

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March 21, 2003

*Cheryl M. Nichols*

Cheryl M. Nichols

APPELLANT'S BRIEF

Sir:

Appellant, Louis B. Paludi, hereby submits his appeal brief.

Appellant submits a check in the amount of \$320.00 to cover the fee for filing this Appeal Brief. If any additional fee is required, please charge such fee to Account No. 50-0289.

Real Party In Interest

The real party in interest is Louis B. Paludi.

Related Appeals and Interferences

There are no related appeals or interferences.

Status of Claims

All of the pending claims, claims 1-22, are on appeal. Each of the claims has been rejected.

Status of Amendments

No amendment has been filed subsequent to the final rejection dated February 18, 2003.

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### Summary of Invention

Applicant will summarize the invention(s). The following summary is not to be construed as limiting or narrowing the interpretation, meaning, or scope of the disclosure contained in the specification or of any pending claim, but rather, is submitted solely for the purpose of complying with 37 C.F.R. § 1.192(c)(5).

The invention generally relates to a game, such as a game that might be played on a computer video screen or a casino slot machine. (p. 1, lines 1-3) For purposes of simplicity and clarity, the game will be described with reference to a football theme, although other types of sporting and non-sporting events are also contemplated as being within the scope of the invention.

A typical football game includes several different events, such as a running play, a passing play, a field goal, a kick off, etc. (p. 4, lines 5-7, p. 9, lines 6-13). Each of these events may be depicted by a series of separate, non-identical images which sequentially illustrate the events (p. 4, lines 7-19). For example, one event may be a pass play which includes three separate, non-identical images: a first image showing a football player in a position of throwing a football, a second image of a football in the air and headed toward a receiver, and a third image of a receiver catching the football. Id. Similarly, the event of a run play may be illustrated by three images: a first image of a player handing the football to a running player, a second image of the player running with the football through the line of scrimmage, and a third image of the player running with the football and pursued by opposing players. Id. The images of each of these events may be inputted into a microprocessor memory or library. (p. 4, lines 7-8) The microprocessor may be programmed so that it can display the images into a template portrayed on the video monitor as three frames arranged in a horizontal row. (p. 5, lines 10-11) The microprocessor is programmed to randomly generate a selected one of the first images of each of the events in the left-most frame, to randomly generate a selected one of the second images in the middle frame, and to randomly generate a selected one of the third images in the right-most frame. (p. 5, lines 12-15) If the images displayed in the three frames sequentially illustrate (non-identical) images of a single event, such as a passing play, then a winning condition has been achieved. (p. 5, lines 15-17) Alternatively, if any two of the frames contain (non-identical) images

of the single event, such as a passing play, then a different winning condition is achieved. (p. 5, lines 18-19)

In a further embodiment, after the microprocessor generates each of the images in the three frames, the player may selectively decide to "hold" any of the images, such as by manually depressing a "hold" button in a well-known manner, and then the player may depress another player control button by which the microprocessor will randomly generate images in the frames that were not "held". (p. 5, line 20-p. 6, line 9) In this embodiment, the player is essentially allowed as second chance to achieve a winning condition. Id.

In yet another embodiment, the invention contemplates that if a player achieves a certain winning condition in the game, such as achieving images in each of the three frames which form a single event, such as a passing play, then the game may entitle the player to participate in a secondary game. (p. 7, lines 7-17) For example, the microprocessor might allow the player to randomly determine whether the football player has scored, and if so, provide the player with an additional award. Id.

Instead of using a horizontal row of three frames in which to display the images, the invention contemplates that a different array of frames, such as a conventional so-called 3 x 3 matrix of frames may be utilized. (p. 8, lines 12-14) In such an embodiment, the winning condition might be achieved if the three images forming an event appear in any horizontal row of frames, or in any diagonal of the frames. (p. 8, lines 18-20)

#### Issues

Whether claims 1 and 12 are unpatentable under §102 as being anticipated by U.S. Patent No. 6,135,885 to Lermusiaux.

Whether claims 1-2, 4, 6-15, and 17-22 are unpatentable under §102 as being anticipated by U.S. Patent No. 6,375,568 to Roffman et al.

Whether claims 3, 5, and 16 are unpatentable under §103 over U.S. Patent No. 6,375,568 to Roffman et al.

### Grouping of Claims

The claims of each group do not stand or fall together. In the Argument section infra, Applicant will explain why the claims of the group are believed to be separately patentable.

### Argument

Applicant will address each of the three basic grounds of rejection made by the Examiner.

#### (a) Claims 1 and 12 Stand Rejected Under §102 As Being Anticipated by U.S. Patent No. 6,135,885 to Lermusiaux

U.S. Patent No. 6,135,885 to Lermusiaux teaches a video game for wagering, which involves a simulated play of a football game. In the embodiment relied upon by the Examiner, the game begins by displaying on a single screen a football field with grid iron markings and goal posts. (Column 5, lines 1-7) The processor randomly selects a field position for a football play. (Column 5, lines 7-10) The processor also selects a defensive team formation from a library of different defensive team formations maintained in the processor. (Column 5, lines 14-32) Thereafter, the player of the game selects any one of a plurality of offensive team formations from a library of offensive team formations maintained in the processor. (Column 5, lines 33-54) The player then hits a play button and the processor selects the outcome based upon the defensive formation and the selected offensive formation. (Column 5, lines 63-p.6, line 5) The processor may also display a simulated play outcome or may display running of an actual, previously recorded and stored running of the play by actual players. (Column 2, lines 29-33)

The '885 patent does not teach a library containing a plurality of series of non-identical images illustrating situations occurring at different sequential times during an event, nor are the images in each series identified as a first time image for the earliest image in the time sequence, a second time image for the second earliest image in time sequence, etc., as specified in each of claims 1 and 12. Although offensive formations and defensive formations may occur at different times, the '885 patent does not teach

any sequence, and also does not identify the images in each series as being an earliest image, a second earliest image, etc. The Examiner contends that non-identical images are shown in sequence on the display, which is not germane to the above-quoted claim language.

The Examiner's final Office Action also does not even attempt to demonstrate how the '885 patent provides "an array of frames arranged substantially in a prescribed arrangement", as recited in claim 1, or "an array of at least three frames in a prescribed arrangement" as recited in claim 12.

Although the Examiner maintains that a "winning condition on the display is depicted as a touchdown or a field goal", the Examiner does not even attempt to show how such a winning condition satisfies the claim language that the winning condition is displayed in the selected frames of one of the series of time sequenced images depicting an event.

Applicant maintains that claim 12 is separately patentable because of the requirement of at least three frames. As previously mentioned, the Examiner has not even attempted to demonstrate how the '885 patent discloses "an array of frames arranged substantially in a prescribed arrangement". To the extent that the Board or the Examiner can glean an array of frames in the '885 patent, Applicant maintains that the '885 patent does not teach an array of at least three frames in a prescribed arrangement.

(b) Claims 1-2, 4, 6-15, and 17-22 Stand Rejected Under §102 As Anticipated By U.S. Patent No. 6,375,568 to Roffman et al.

U.S. Patent No. 6,375,568 to Roffman et al. teaches an interactive gaming system whereby a group of players may play the game from a remote location. The '568 patent incidentally discloses that the gaming machine may include a "theme game" (column 7, lines 57-58). The theme game may be baseball, football, soccer, hockey, etc. (column 7, line 66-p.8, line 1). If the theme game is baseball, for example, then there are a plurality of different types of symbols, such as those set forth on Table IA. (column 8, lines 28-39 and column 9, lines 10-22). A player generally achieves a winning condition by lining up in a standard array of frames in a slot machine a series of identical symbols, such as symbols for a home run, symbols for a triple, symbols for

a ball, etc. (column 9, lines 34-45 and column 10, lines 36-54). Other aspects of the theme games are much more complicated and do not seem to be relevant to the instant claims. It should be readily apparent that the theme games simply comprise a plurality of identical and non-identical images and that winning combinations occur when identical images are shown in alignment. Thus, the '568 patent's relevant disclosure is nothing more than a standard slot machine that displays images of home runs, triples, balls, etc. instead of cherries, bells, bars, as are displayed in well-known, conventional slot machines.

Although the '568 patent discloses non-identical images that might occur at different times during an event, the '568 patent does not disclose maintaining a library containing a plurality of series of non-identical images illustrating situations occurring at different sequential times during an event, nor does it disclose that the images in each series are identified as a first time image for the earliest image in the time sequence, second time image for the second earliest image in the time sequence, etc., as recited in claims 1, 11, 12, and 22.

The '568 patent also fails to disclose a winning condition as being the display in the selected frames of one of the series of time sequenced images depicting an event as recited in claims 1, 11, 12, and 22. As recited earlier in each of the claims, the series is of non-identical images. In contrast, the '568 patent describes a winning condition as being identical images.

All of the dependent claims are likewise patentable for the foregoing reasons.

Applicant believes that claim 22 is separately patentable. Claim 22 recites that the library contains at least three series of non-identical time sequenced images. The '568 patent does not disclose even one such series, and it is believed that the recitation of at least three series is separately patentable.

(c) Claims 3, 5, and 16 Stand Rejected Under §103 As Being Unpatentable Over U.S. Patent No. 6,375,568 to Roffman et al.

The Examiner has rejected claims 3, 5, and 16 under §103 as being unpatentable over U.S. Patent No. 6,375,568 to Roffman et al. The Examiner does not refer to any other specific prior art in combination with the '568 patent to arrive at the invention as

recited in claims 3, 5, and 16.

With regard to claim 3, Applicant incorporates by reference his above-recited arguments regarding the patentability of claims 1 and 2 in view of the '568 patent. Likewise, with respect to claim 16, Applicant incorporates by reference his above-recited arguments with respect to patentability of claim 12 in view of the '568 patent.

With respect to claims 5 and 16, Applicant believes that these are separately patentable. The Examiner, without support, contends that it would have been obvious to one who was skilled in the art at the time the invention was made to modify the teachings of the '568 patent from a sport theme to include a race theme. The '568 patent only specifies that "the theme game can be Baseball, Football, Soccer, Hockey, etc.". (column 7, line 66-column 8, line 1) There is no mention of any race theme. Where, for example, the '568 patent teaches a baseball sports theme with features such as strike, ball, home run, single, etc., how one would of ordinary skill in the art obviously modify that game to incorporate a foot race or a car race?

Appendix


A copy of the claims involved in the appeal is set forth in an attached Appendix.

The Commissioner is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to Deposit Account No. 50-0289.

Respectfully submitted,

WALL MARJAMA & BILINSKI LLP

By:

  
\_\_\_\_\_  
Robert E. Purcell  
Reg. No. 28,532

REP/cmn

Customer No.:



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## APPENDIX

1. A method of playing a video game comprising the steps of:

maintaining a library containing a plurality of series of non-identical images illustrating situations occurring at different sequential times during an event, with each series depicting a different event, and with at least two images in each series, the images in each series identified as a first time image for the earliest image in the time sequence, a second time image for the second earliest image in time sequence, etc.;

providing an array of frames arranged substantially in a prescribed arrangement;

displaying in a selected frame a selected one of the first time images from said library;

displaying in another selected frame a selected one of the second time images from said library;

establishing as a first winning condition the display in the selected frames of one of the series of time sequenced images depicting an event.

2. A method according to claim 1 wherein said library contains at least three series, wherein there are at least three images in each series, and wherein the array includes at least nine frames arranged in at least three vertically oriented columns and at least three horizontally oriented rows.

3. A method according to claim 2 comprising the further step of establishing as a second winning condition the display in the frames diagonally extending through the columns and rows one of the series of time sequenced images depicting an event.

4. A method according to claim 1 wherein each of the events comprises a sports activity.

5. A method according to claim 4 wherein each of the events comprises a race activity.



6. A method according to claim 4 wherein each of the events comprises a football game activity.

7. A method according to claim 1 comprising the further step of providing a secondary game by which a second winning condition may be attained if said first winning condition is attained, said second winning condition being different from said first winning condition.

8. A method according to claim 6 comprising the further step of providing a secondary game by which a second winning condition may be attained if said first winning condition is attained, said second winning condition being different from said first winning condition.

9. A method according to claim 8 wherein said secondary winning condition comprises a football game scoring play.

10. A method according to claim 1 comprising the further step of awarding a prize to a player of the game who achieves said winning condition.

11. A video game apparatus comprising;

means for maintaining a library containing a plurality of series of non-identical images illustrating situations occurring at different sequential times during an event, with each series depicting a different event, and with at least two images in each series, the images in each series identified as a first time image for the earliest image in the time sequence, a second time image for the second earliest image in time sequence, etc.;

means for providing an array of frames arranged substantially in a prescribed arrangement;

means for displaying in a selected frame a selected one of the first time images from said library;

means for displaying in another selected frame a selected one of the second time images from said library; and

means for identifying as a first winning condition the display in the selected frames of one of the series of time sequenced images depicting an event.

12. A method of playing a video game comprising the steps of:

maintaining a library containing at least three series of non-identical images illustrating situations occurring at different sequential times during an event, with each series depicting a different event, and with at least three images in each series, the images in each series identified as a first time image for the earliest image in the time sequence, a second time image for the second earliest image in the time sequence, a third time image for the third earliest image in the time sequence, etc.;

providing an array of at least three frames in a prescribed arrangement;

displaying in a first selected frame a selected one of the first time images from said library;

displaying in a second selected frame a selected one of the second time images from said library;

displaying in a third selected frame a selected one of the third time images from said library;

establishing as a first winning condition the display in the three selected frames of one of the series of time sequenced images depicting an event.

13. A method according to claim 12 wherein said three selected frames are located adjacent to each other in said array.

14. A method according to claim 12 wherein said first selected frame is located to the left of said second selected frame, and wherein said second selected frame is located to the left of said third selected frame.

15. A method according to claim 12 wherein each of the events comprises a sports activity.

16. A method according to claim 15 wherein each of the events comprises a race activity.
17. A method according to claim 15 wherein each of the events comprises a football game activity.
18. A method according to claim 12 comprising the further step of providing a secondary game by which a second winning condition may be attained if said first winning condition is attained, said second winning condition being different from said first winning condition.
19. A method according to claim 17 comprising the further step of providing a secondary game by which a second winning condition may be attained if said first winning condition is attained, said second winning condition being different from said first winning condition.
20. A method according to claim 19 wherein said secondary winning condition comprises a football game scoring play.
21. A method according to claim 12 comprising the further step of awarding a prize to a player of the game who achieves said winning condition.
22. A video game apparatus comprising:
- means for maintaining a library containing at least three series of non-identical images illustrating situations occurring at different sequential times during an event, with each series depicting a different event, and with at least three images in each series, the images in each series identified as a first time image for the earliest image in the time sequence, a second time image for the second earliest image in the time sequence, a third time image for the third earliest image in the time sequence, etc.;
  - means for providing an array of at least three frames in a prescribed arrangement;
  - means for displaying in a first selected frame a selected one of the first images from said library;

means for displaying in a second selected frame a selected one of the second images from said library;

means for displaying in a third selected frame a selected one of the third images from said library; and

means for identifying as a first winning condition the display in the three selected frames of one of the series of time sequenced images depicting an event.